IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 564 OF 2004.

1. Shri Gajanan Raghunath Kansar,
aged 72 years, occupation- agriculturist/
business, residing at House No. 57,
Gaonkarwadda, Bicholim, Goa.

2. Shri Yogesh Ulhas Kansar,
aged 25 years, occupation – business,
residing at House No. 57,
Gaonkarwadda, Bicholim, Goa. .... Petitioners.

Versus

1. State of Goa,
through its Chief Secretary,
having his office at Secretariat,
Porvorim, Goa.

2. Chief Engineer,
Public Works Department,
Government of Goa,
Altinho, Panaji, Goa.

3. Deputy Collector & Land Acquisition
Officer, Office of the Deputy Collector,
Bicholim, Goa.

4. M/s. Dempo Mining Corporation Ltd.
A Company incorporated under the
Companies Act, 1956, having its
Office at Dempo House, Campal,
Panaji, Goa. .... Respondents.

Shri S. N. Joshi, Advocate for the Petitioners.

Shri A.N.S. Nadkarni, Advocate General with Shri P.A. Kamat, Government Advocate for the Respondents No.1, 2 and 3.

Shri Sudesh Usgaonkar, Advocate for the Respondent No.4.

CORAM: B.H. MARLAPALLE &
N. A. BRITTO, JJ.

DATE: 21st DECEMBER, 2004.

ORAL ORDER: (Per Marlapalle, J.)

Heard Mr. Joshi, the learned counsel for the petitioners, Mr. Nadkarni, the learned Advocate General with Mr. P.A. Kamat, learned Government Advocate for the Respondents No.1, 2 and 3 and Mr. Usgaonkar, the learned Advocate for the Respondent No.4.

2. In this petition filed under Article 226 of the Constitution, the petitioners have questioned the legality of the Land acquisition proceedings initiated by the State Government by issuing the notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the Act) on 24.3.03. In fact, on 25.4.2000 a similar notification was issued and was allowed to be lapsed. The said notice of acquisition was made public on 3.6.03 and objections were received on 2.7.03 and at this stage the State Government while publishing the declaration under S.6 of the Act, decided to invoke the urgency clause within the meaning of S.17 of the Act as per the notification dated 25.11.03. The Land Acquisition Officer issued notices under Sections 9 and 10 on 16.1.04 and passed his award on 30.7.04. Notices under S.12(2) were thereafter issued to all the land owners including the present petitioners. This petition has been presented before this Court on or about 14.12.04 and by the Civil Application presented during the course of hearing, the learned counsel for the petitioners raised a serious grievance that the possession of the land was forcibly taken over by drawing a panchanama on 16.12.04. It is also alleged that the structure standing on the subject land of the petitioners was demolished by

bulldozers belonging to Respondent No.4.

3. The petitioners claim that they are the owners of the land located in Survey No.18/28 of village Bicholim and an area admeasuring 5450 sq.metres has been acquired pursuant to the notification dated 24.3.03. It is noticed that the said notification sought to acquire total area of 8100 sq.m. initially, but subsequently when the declaration was issued under S.6 the area under acquisition has been reduced to 7172 sq.m. In the first notification under S.4 of the Act the petitioners were likely to lose an area of 5400 sq.m., but in the subsequent declaration dated 25.11.03 the said area has been reduced to 4770 sq.m. Mr. Nadkarni, the learned Advocate General contended that this deduction was on account of saving the so called temple structure on account of the objections raised by the petitioners during the inquiry conducted under S.5A of the Act. Be that as it may, the challenge raised to the acquisition is on the following grounds :-

(a) Though the acquisition is said to be for public purpose, it is in fact solely for the purpose of the respondent No.4 Company;

(b) The mandatory provisions under the Act have not been followed; and

© The acquisition is by colourable exercise of the Government's powers under the Act.

4. In support of the challenge to the acquisition proceedings, the learned counsel for the petitioners placed reliance on the following decisions :-

(1) Valjibhai Muljibhai Soneji and another v. The State of Bombay (A.I.R. 1963 S.C. 1890);

(2) Shyam Behari and others v. The State of Madhya Pradesh and others (A.I.R. 1965 S.C. 427); and

(3) Union of India & Ors. v. Mukesh Hans, etc. etc. (2004 (5) All MR (S.C.) 1170).

5. Mr. Joshi contended that the record as brought before this Court showed that the expenditure for construction of the road has been met by Respondent No.4. The proposed road diversion sought to be constructed is entirely for the purpose of Respondent No.4 and therefore the acquisition is not for public purpose as defined under Section 3(f) of the Act. He submitted that for the acquisition made for the purpose of respondent No.4, Chapter VII of the Act was applicable and more particularly under S.38A. It was contended that by obeying the provisions of proviso to section 6 of the Act the amount was totally deposited by the respondent No.4 and therefore this was an acquisition for respondent No.4 Company and not for the public purpose. He also submitted that the diversion proposed was deliberately sought to be changed in its direction and it was not necessary to have such a diversion. The State Government was totally committed to help the cause of the private party namely the respondent No.4 and at the cost of the petitioners and similarly placed agriculturists the land was sought to be a acquired under the colourable exercise of the State's powers under the Act.

6. Mr. Nadkarni, the learned Advocate General, on the other hand, has

supported the proceedings and opposed the petition. He has placed the concerned files before us and pointed out by relying upon the decision in the case of **Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. And others [(1996) 11 S.C.C. 501]** that when the award was passed and possession was taken over, this Court should not exercise its powers to quash and set aside the acquisition proceedings under Art. 226 of the Constitution. It was submitted that the subject acquisition was for public purpose namely construction of a by-pass road, about 1200 metres in length so as to ease the mining traffic congestion on the main Bicholim-Sarmanas road which is about 5 kms. in length and serves as an important interdistrict road between Bicholim – Ponda Taluka. The recovery of expenditure required for construction of the diversion road from the private mining companies is no reason to quash and set aside the acquisition proceedings so long as the road is going to be constructed by the State Government and the expenditure is from the public account.

7. From the documents submitted by the petitioner and as annexed to the petition memo as well as the files submitted by the learned Advocate General, we have noted that the proposed diversion is a stretch of about 1200 metres in length and is exclusively to cater to the mining traffic as the existing road is unable to cater to the same. The width of the road is about 40 metres. Out of the total stretch of 1200 metres the land pertaining to mining sector was made available free of cost upto 995 sq.m. and the Government faced problem only to the remaining stretch of 205 metres. It was under these circumstances that the acquisition proceedings were required to

be initiated only in respect of the stretch of 205 sq.m. length and 40 metres of width. The petitioners were not the only land owners, but indeed there were some others who had also the objections to the inquiry conducted under Section 5A of the Act. The allegations of Mr. Joshi, learned Advocate for the petitioners that the inquiry under S.5A was given a go-bye while invoking the urgency clause of S.15 of the Act are not supported by the record. The award passed by the Land Acquisition Officer and a copy of which has been brought on record speaks that an inquiry under S.5 was conducted when the petitioners had appeared and filed objections on the ground of non-availability of alternative land as well as existence of a temple. These objections have been duly considered. We have also noted that the subject diversion is a public road being constructed by the State Government through the P.W.D. and as per the order passed by the Chief Engineer, P.W.D. on 5.4.02 the expenditure is debitable to budget head Civil Deposit-108 -P.W. Deposit Part III. The road is going to remain as public property and it is not going to be handed over to any mining company though the traffic on this road may be substantially that of the mining companies. We are therefore satisfied tat the purpose for acquisition of the land under challenge is certainly public purpose within the meaning of Section 3(f) of the Act and the allegations that it was for the purpose of respondent No.4 are unsustainable.

8. The recovery of the cost of the road either partly or fully from the respondent No.4 or other mining companies will not by itself vitiate the acquisition proceedings just because the provisions of Chapter VII of the Act have not been followed by the State Government. This issue as

well as the issue of colourable exercise of powers have been squarely answered by the Apex Court in the case of **Pratibha Nema and others v. State of M.P. and others [(2003) 10 S.C.C. 626]** wherein after referring to the catena of its earlier decisions, the Court in para 22 observed thus :-

> " Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the decisive distinction lies in the fact whether the cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis , what is considered to be an acquisition for facilitating the setting up of an industry in the private sector could be imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that seems to be the real position. "

9. We have also noted from the records that after the award was passed by the Land Acquisition Officer on 30.7.04 notice under Section 12(2) of the Act was issued to the petitioners starting from August, 2004. We have noted from the file that a second notice dated 12.11.04 was served on the first petitioner on 19.11.04 and it was informed that the possession of the subject land would be taken over on 23.11.04. The third notice dated 30.11.04 under Section 12(2) of the Act was issued and it was served on the petitioner No.1 on 10.12.04. It was stated in the said notice that the possession of the subject land would be taken over on 16.12.04. The allegations of the petitioner that the

possession was taken over with high-handed action and that too when the petition was moved before this Court are baseless. Mr. Joshi contended that the bulldozer which was used to demolish the structure was that of respondent No.4. Even if that be so, that alone would not vitiate the acquisition proceedings.

10. We do not find any reason to cause interference that too at this belated stage when the award has been passed and the possession of the subject land has also been taken over. In the case of **Municipal Council, Ahmednagar and another v. Shah Hyder Beig and others (A.I.R. 2000 S.C. 671)** the Supreme Court has stated in para 17 thus :-

" In any event, after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court.. "

11. Hence this petition fails and the same is rejected summarily.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

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